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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,401	12/08/2003	David J. Broel	11287	9772

7590 04/26/2005
Walter A. Rodgers
Rodgers & Rodgers
880 North Island Drive
Atlanta, GA 30327

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,401

Applicant(s)

BROEL, DAVID J.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claim 7 and objected claims 4 and 5 are withdrawn in view of the reference(s) French Patent FR 2620591 to Roder in view of U.S. Patent No. 31,48,480 to Gallo. Rejections based on the cited reference(s) follow.

Claim Objections

Claim 1 is objected to because of the following informalities:

Claim 1, line 2, "insertable into a vase" should be --and a vase--. It is not clear from the current claim language whether applicant has intended to claim the combination of the holder and the vase. The current language is presented merely as if the holder is "capable" of being used in a vase, but the vase is not necessarily part of the structural limitation of the claim. Based on the current language of the claim, the structure of the vase has not been considered.

Claim 9, line 1, "insertable into a vase" should be --and a vase--

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims, 1, 3-5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent FR 2620591 Roder in view of U.S. Patent No. 3,148,480 to Gallo.

Regarding Claim 1, Roder teaches a cemetery flower holder insertable into a vase comprising a shaft (Roder Fig. 1 #15) and multiple elongated deformable extensions (Roder Fig. 1 #15, 10, 14) extending outwardly from the shaft with the ends thereof in abutment with the inner surface of the vase, the extensions being respectively horizontally and vertically spaced, a base shaft (Roder Fig. 1 #15), a disc (Roder Fig. 1 #3); a foam insert above the disc (Roder #1 page4, line 16 "mousse").

Roder teaches a foam insert (Roder #1), but is silent on the foam insert surrounding an upper shaft. However, Gallo teaches a holder with a base shaft (Gallo Fig. 1 #12) and an upper shaft (Gallo Fig. 1 #18) with a disc (Gallo Fig. 1 #20; Roder Fig. 1 #3) disposed therebetween for a foam insert (Gallo Title). It would have been obvious to one of ordinary skill in the art to modify the teachings of Roder with the teachings of Gallo to have an upper shaft on the opposite side of the disc of the base shaft at the time of the invention for additional vertical support and to position the foam as taught by Gallo. Roder as modified by Gallo teaches that the foam insert (Roder #1) envelopes the upper shaft (Gallo #18).

Regarding Claim 3, Roder as modified teaches the end of said upper shaft remote from said disc is enlarged (Gallo Fig. 1 #18).

Regarding Claims 4 and 9, Roder as modified teaches the disc comprises an upper surface and wherein at least one prong extends upwardly from said upper surface (Roder Fig. 1 #4).

Regarding Claims 5 and 7, Roder said disc comprises an outer edge and wherein a pair of straps extend upwardly from the outer edge (Roder Fig. 1 #2).

Response to Arguments

Applicant's arguments with respect to claims 1, 3-5, 7, and 9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

20 April 2005



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600